

Message Text

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ORIGIN XMB-04

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EXIMBANK

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FM SECSTATE WASHDC
TO AMEMBASSY BANGKOK PRIORITY

UNCLAS STATE 154288

E.O. 11652: N/A

TAGS: -- EFIN, TH

SUBJECT: -- EXIMBANK CREDIT NOS. 2336 AND 6212
SIAM KRAFT PAPER CO., LTD. (SKPC) CUSTOMS
LITIGATION

FYI EXIMBANK RECEIVED FOLLOWING TELEX JUNE 28, 1977 FROM
TARRIN-SKPC QUOTE RE SKPC PULP IN ROLL TAX CASE SKPC
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BOARD YESTERDAY DECIDED THAT IN CASE SUPREME COURT
DECISION ADVERSE AN APPEAL FOR A REPAYMENT WITH EVEN
INSTALLMENT OVER A TEN YEAR PERIOD WOULD BE MADE TO THE
CRIMINAL COURT. ANY REQUEST FOR A REPAYMENT PERIOD WHICH
EXTENDS OVER A STATUTORY PERIOD OF TEN YEARS WOULD NOT BE
DEEMED APPROPRIATE. DUE TO ABSENCE OF VAN AGTMAEL, A
FINANCE COMMITTEE MEETING TO REVIEW BOARD DECISION WOULD
BE WITHOUT EXIM'S AND OPIC'S REPRESENTATION. STRONGLY
URGE YOUR PRESENCE IN BANGKOK BEFORE JULY 11 WHICH IS

VERDICT DATE. ALL PRE-VERDICT STRATEGIES SUGGESTED BY YOU I.E. CASE DISMISSAL, COMPROMISED SETTLEMENT AND REHEARING ARE NOT POSSIBLE. PLEASE CONVEY CONTENT THIS TELEX TO OPIC. END QUOTE. EXIMBANK/OPIC BELIEVE IT DESIRABLE FOR THEIR REPLY TO BE SUBMITTED THROUGH EMB. THEREFORE WOULD APPRECIATE EMB DELIVERING FOLLOWING MESSAGE TO TARRIN. END FYI.

QUOTE TARRIN NIMMANAHAEMINDA, SECRETARY
BOARD OF DIRECTORS, SKPC

DEAR TARRIN:

I. IMPLICATION URTELEX IS THAT IF SUPREME COURT DECISION IS ADVERSE, SKPC BOARD PROPOSES ASK CRIMINAL COURT FOR REPAYMENT OVER TEN YEARS AS SATISFACTORY DISPOSITION OF MATTER WITHOUT ANY FURTHER APPROACH TO THAI GOVERNMENT. IF THIS CORRECTLY EXPRESSES SKPC INTENT, EXIMBANK/OPIC CANNOT AGREE WITH SUCH POSITION WHICH APPEARS DEPARTURE FROM VIEWS EXPRESSED BOTH BY EXIMBANK AND SKPC THAT MATTER WOULD BE APPEALED TO THAI GOVERNMENT FOR SUBSTANTIAL REDUCTION AND DEFERRAL OF PENALTIES. AS YOU KNOW, WE HAVE GIVEN OUR VIEWS TO AMERICAN EMBASSY AND IT WAS OUR IMPRESSION THAT SKPC HAD COUNSELED DEFERRAL OF ACTION
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UNTIL DECISION AND THAT IN EVENT OF ADVERSE DECISION, BOTH AMERICAN EMBASSY, ON BEHALF EXIMBANK/OPIC AND SKPC, WOULD PURSUE PARALLEL REPRESENTATIONS TO THAI GOVERNMENT.

II. EXIMBANK/OPIC BELIEVES ANYTHING LESS THAN FULL PRESENTATION TO THAI GOVERNMENT OF FOLLOWING FACTS WOULD BE A DISSERVICE TO BOTH SKPC AND LENDERS: (A) ALTHOUGH AN ADVERSE SUPREME COURT DECISION MAY EXHAUST JUDICIAL REMEDIES, IT IS THE THAI GOVERNMENT WHICH IS RESPONSIBLE FOR PROSECUTING THIS CASE TO ITS PRESENT STATE AND IT IS EXECUTIVE REMEDIES WHICH NOW NEED TO BE ADDRESSED; (B) PENALTIES INVOLVED ARE DISPROPORTIONATE TO ALLEGED OFFENSE, PARTICULARLY IN VIEW OF LONG AND DUBIOUS HISTORY OF CASE; (C) A JUDGMENT CREDITOR, WHETHER THE GOVERNMENT OR NOT, CANNOT EXPECT TO RECOVER 100% ON THE DOLLAR FROM A COMPANY WHICH, BUT FOR THE FOREBEARANCE OF ITS CREDITORS, WOULD BE BANKRUPT; (D) MATERIAL ADVERSE CONSEQUENCES FOR EXIMBANK/OPIC AND OTHER LENDERS WOULD RESULT IF THESE PENALTIES WERE REQUIRED TO BE PAID, EVEN IF OVER A TEN-YEAR PERIOD.

III. WE WILL COORDINATE OUR DISCUSSIONS WITH YOU AND AMERICAN EMBASSY ON THIS MATTER AND, IN ABSENCE OF VAN AGTMAEL, EITHER WILL PARTICIPATE DIRECTLY FROM

WASHINGTON ON DELIBERATIONS OF FINANCE COMMITTEE OR WILL
DESIGNATE A SUBSTITUTE FOR VAN AGTMAEL IN THAILAND. DO
NOT BELIEVE IT FEASIBLE TO SEND ANYONE FROM WASHINGTON
AT THIS TIME. SINCERELY, WALTER C. SAUER, EXIMBANK.
END QUOTE. CHRISTOPHER

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